

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

KENDRA N. H.,

Plaintiff,

v.

Civ. No. 24-18 GBW

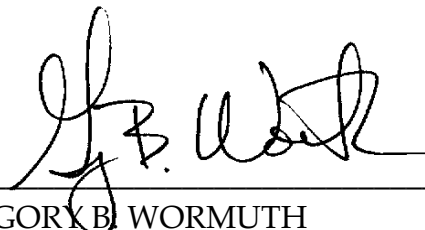
MARTIN O'MALLEY, *Commissioner of the
Social Security Administration,*

Defendant.

**ORDER GRANTING STIPULATED MOTION FOR EQUAL ACCESS TO JUSTICE
(EAJA) ATTORNEY FEES**

THIS MATTER comes before the Court on Plaintiff's Stipulated Motion for Equal Access to Justice (EAJA) Attorney Fees. *Doc. 27*. The parties have stipulated to an award of \$7,300.00 in attorney fees to Plaintiff pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 ("EAJA"). Payment of this amount shall constitute a complete release from and bar to any and all claims Plaintiff may have relating to EAJA fees in connection with this action. However, the EAJA award is without prejudice to Plaintiff's attorneys right to seek attorney fees pursuant to Social Security Act § 206(b), 42 U.S.C. § 406(b), subject to the offset provisions of the EAJA. *See* 28 U.S.C. § 2412(c)(1) (2006).

IT IS HEREBY ORDERED that Plaintiff is awarded \$7,300.00 in attorney fees and \$0.00 in costs under the EAJA. Under *Astrue v. Ratliff*, 560 U.S. 586, 595–98 (2010), EAJA fees awarded by this Court belong to the Plaintiff and are subject to offset under the Treasury Offset Program. 31 U.S.C. § 3716(c)(3)(B) (2006). This Court therefore orders the EAJA fees to be paid to Plaintiff but delivered to Plaintiff's attorney. If, after receiving the Court's EAJA fee order, the Commissioner (1) determines that Plaintiff has properly assigned her right to EAJA fees to her attorney; (2) determines that Plaintiff does not owe a debt that is subject to offset under the Treasury Offset Program; and (3) agrees to waive the requirements of the Anti-Assignment Act, then the EAJA fees will be made payable to Plaintiff's attorney. However, if there is a debt owed under the Treasury Offset Program, the Commissioner cannot agree to waive the requirements of the Anti-Assignment Act, and the remaining EAJA fees after offset will be paid by a check made out to Plaintiff but delivered to Plaintiff's attorney. In addition, if Plaintiff's attorney ultimately receives an award of attorney fees pursuant to 42 U.S.C. § 406(b), said attorney must refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).



GREGORY B. WORMUTH
CHIEF UNITED STATES MAGISTRATE JUDGE
Presiding by Consent